

10/065,564

Reply to Office Action of Dec. 21, 2004

Page 5

REMARKS/ARGUMENTS

Claims 1 and 8 have been amended. Sixteen claims remain pending in the application: claims 1-16. Reconsideration of claims 1-16 in view of the amendments above and arguments below is respectfully requested.

At the outset, Applicants acknowledge with appreciation the Examiner's indication that claims 5, 6, 14, and 15 would be allowable if rewritten in independent format including all of the limitation of the base claim and any intervening claims.

Written Statement Regarding Substance of 2/8/2005 Interview per 37 CFR 1.113(b)

Applicant extends appreciation for the opportunity to discuss the rejections in the present application with Examiner Saether in the telephone interview that occurred on February 8, 2005, at 6:15 p.m. EST. Those participating in the interview were the undersigned, co-counsel Thomas F. Lebens, the inventor Saeed Niku, and inventor's representative Mike Manchak. In accordance with the requirements of 37 CFR 1.113(b), and the Manual of Patent Examining Procedure (MPEP) § 713.04, Applicant provides the following written statement of the reasons presented at the interview as warranting favorable action.

No exhibits were shown or discussed. The claims that were discussed were independent claims 1 and 8. The prior art discussed was U.S. Patent No. 240,780 of Smith (the '780 patent) and U.S. Patent No. 2,045,757 of Constantin (the '757 patent).

Regarding the '780 patent, the general thrust of Applicants' argument was that (a) the '780 patent does not teach selective compliance as is claimed in the present

10/065,564

Reply to Office Action of Dec. 21, 2004

Page 6

application (Applicants remarks included clarification of the meaning of the term "selective compliance") and (b) the positioning of the core material in the present application *runs internal* to the spiral set of teeth where the core material in the '780 patent is partially *inserted into the core material*. With regard to the '757 patent, Applicants argued that the present application teaches and claims a fastener whereas the '758 patent teaches a conveyor.

The Examiner indicated that an amendment to the independent claims reading "...a selectively compliant core material running completely internally to said spiral set of teeth..." would obviate the rejections based on the '780 patent.

The Examiner indicated that in his view the '757 patent is different than the present application in that the '757 patent teaches a conveyor whereas the present application teaches a fastener. The Examiner asked Applicant to point to specific language used in the present claims to distinguish the present invention from a conveyor.

Turning to the specific objections and rejections:

1. Claims 1, 3, 8, 10, 11, and 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 240,780 of Smith.

In the telephone interview held on February 8, 2005 the Examiner suggested amending the present claims to read "...a selectively compliant core material running completely internally to said spiral set of teeth..." in order to distinguish the present claims from the cited art. Applicant has accordingly amended independent claims 1 and 8. Thus, Applicants respectfully submit that claims 1 and 8 are now in condition for allowance. Because claims 3, 10, 11, and 12 depend on claims 1 and 8, Applicants request that the present

10/065,564

Reply to Office Action of Dec. 21, 2004

Page 7

rejection be withdrawn from each of claims 1, 3, 8, 10, 11, and 12.

2. Claims 1, 2, 4, 7, 8, 13, and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,045,757 of Constantin.

In the telephone interview held on February 8, 2005 the Examiner requested that Applicant point out specific language used in the present claims to distinguish the present invention from a conveyor. In response, Applicants point to the preamble of each pending claim wherein the preamble of each claim is directed to a "fastener." In the office action of December 21, 2004, the Examiner states, "...a preamble is generally not accorded any patentable weight where it merely recites the intended use of a structure¹..." However, Applicants respectfully point out that the limitation of a "fastener" is not limited to the preamble of independent claims 1 and 8. Rather, each of claims 1 and 8 refer back to the preamble in the body of the claim, i.e., "...so that said fastener is laterally flexible along its length²...", such that the limitation set forth in the preamble is also included in the body of the claim. Thus, Applicants have distinguished the present claim set directed to a fastener from the conveyor of the '757 patent.

Additionally, Applicants point out that the conveyor of Constantin is not "flexible along its length" as described and claimed by Applicant in the pending independent claims. For example, see Figure 1 of the '757 patent. Figure 1 depicts a conveyor apparatus having rigid sections 3 and 4.

Therefore, Applicants respectfully submit that independent claims are distinct from the apparatus described in the '757 patent because the limitation of a "fastener" is

¹ See page 3, paragraph 3

² See pending claims 1 and 8

10/065,564

Reply to Office Action of Dec. 21, 2004

Page 8

claimed and recited in the body of each of the pending independent claims and because the '757 patent teaches rigid sections whereas the present application is advantageously "flexible along its length" as recited in the independent claims. As claims 2, 4, 7, 13, and 16 depend of claims 1 and 8, Applicants request that the present rejection be withdrawn from each of the claims 1, 2, 4, 7, 8, 13, and 16.

10/065,564

Reply to Office Action of Dec. 21, 2004

Page 9

CONCLUSION

By way of this amendment, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that Examiner telephone Thomas Lebens at (805) 781-2865 so that such issues may be resolved as expeditiously as possible.

In view of the above, Applicants submit that Claims 1-16 are now in condition for allowance, and prompt and favorable action is earnestly solicited.

Respectfully submitted,

SINSHEIMER, SCHIEBELHUT & BAGGETT



Julie A. Hopper
Reg. No. 50,869

Address all correspondence to:
SINSHEIMER, SCHIEBELHUT & BAGGETT
P.O. Box 31
San Luis Obispo, CA 93406

Direct telephone inquiries to:
Thomas F. Lebens
805-781-2865